

Serial No. 10/824,203

Art Unit: 4173
Examiner: Luke E. KarpinskiREMARKS

In response to the Patent Office Letter of June 9, 2009, the Applicant respectfully requests re-examination and reconsideration. Amendments have been made in the two independent claims, namely claims 9 and 38. With these amendments it is believed that this application should now be in condition for allowance.

Before discussing the present rejection made by the Examiner and the merits of the present invention, the Applicant wishes to emphasize the fact that the concepts of the present invention and that disclosed in Dawson et al. have substantially different objectives. It is the Applicant's position that Dawson et al. addresses a totally different problem or issue in comparison to the issue of the present invention. Dawson et al. is concerned with a soap-free cleansing composition which has increased speed of foaming and which has good stability. In this regard refer in Dawson et al. to the objects listed in column 3 starting at line 20. It is also noted from Dawson et al. that there is no clear teaching as to how long the gel actually takes to form. As a matter of fact, the indication of the use of elevated pressures in Dawson et al. is an indication of too early a formation of the gel.

Now, in accordance with the present invention this relates to a method for enhancing the manufacturing process by deliberately controlling the formation of the gel so as to overcome the issue of the composition gelling in and clogging up pipes during the manufacturing process. Thus, in accordance with the present invention, the composition is deliberately maintained in a non-gelled state for at least four minutes after the addition of the post-foaming agent. This not only reduces the manufacturing cost of the end product, but it also increases the filling rates; meaning more units of composition of the present invention can be produced in the same time period relative to previously available compositions. Furthermore, this is performed without compromising the appearance of the gel on first dispensing from the packaging or from the quality of the lather produced by agitating the gel by the user.

It is the Applicant's position that a person skilled in the art would not be able to arrive at the method defined in claim 1 by consideration of Dawson et al. whether taken alone or in

Serial No. 10/824,203

Art Unit: 4173
Examiner: Luke E. Karpinski

combination with Hall et al. There is absolutely no motivation to solve the same problem as that of the present invention. Neither Dawson et al. nor Hall et al. teach the deliberate creation of a composition which specifically is not converted to a gelled state for at least four minutes after addition of the post-foaming agent to solve the problem of stoppages and breakdowns in the pipe-work of the plant manufacturing the composition. In this regard refer to the background discussion of the present application, particularly with respect to document WO 00/39273.

Now, considering in particular Dawson et al., it is still the Applicant's position that this reference does not teach a delayed gelling of at least four minutes. Instead, Dawson et al. teaches that the final gel product is filled under pressure into the final package. In this regard refer to column 9 of Dawson et al. at lines 8-12 where it is indicated that the final gel product is stored in a pressurized cylinder until it is filled under pressure into the final package. The Applicant does not perform its method in this manner.

In the past the Examiner has also made mention of another part of the teaching in Dawson et al., namely at column 9, lines 3-8, which mentions that a gel can be generated by shaking all components inside a barrier pack type container (i.e., a final package) or by mixing in any vessel which can maintain pressures. However, even under that circumstance, it is noted that the liquid mixture in Dawson et al. is taught as always kept under pressure in storage before being added to any vessel. Furthermore, any vessel that it is added to is taught in Dawson et al. as also being pressurized. In this regard refer in Dawson to the teachings at column 8, line 53 through column 9, line 2 reference is made to pressurizing at several points. More specifically, the Dawson et al. teaching is that the gel is pumped into a steel pipe system where the pressure is maintained at 80-120 psi (column 8, lines 53-57). It is then piped into a storage cylinder which is maintained at 80-90 psi (column 8, lines 65-69). It is hence apparent that the Dawson et al. composition must always be kept under pressure, even before packaging, and including before it is added to the barrier pack type container as described by the Examiner with his reference to column 9 at lines 3-7.

Serial No. 10/824,203

Art Unit: 4173
Examiner: Luke E. Karpinski

The Applicant now sets forth further arguments as related to the different embodiments shown in the Dawson patent. In this connection there are basically two different embodiments that are described:

a) The first main embodiment is disclosed in Dawson at column 8, line 53 to column 9, line 2 and column 9 lines 8-19, involving the high pressure transport through the pipework etc, followed by the composition being piped into storage containers before gelling, and filling the final package with the final product. The Examiner maintains that the first embodiment of Dawson also teaches the formulations being dispensed into large storage containers prior to gelling, and that these storage containers could be sold as final containers for industrial purposes. The applicant disagrees with this idea, as "final container" is clearly meant within the context of the present application as one which is intended to be a small container suitable for personal use. However, to clarify the term "final container" in the independent claims 9 and 38 the final container is now set forth as selected from a group comprising a bag on valve container, a bag in can container and an elasticated bladder container. Basis for this addition to the independent claims can be found at page 10, lines 9-12 of the original specification.

This addition to the independent claims should distinguish between the final container being for personal use and the final container being an industrial storage container. Clearly, Dawson's composition does gel before being transferred to a personal use container. Refer to Dawson at column 9 lines 8-11 which makes clear reference to a "final gel product" being stored in a pressurized cylinder *before being filled under pressure into a final package* which may be a pressurized aerosol container for dispensing the gel product. This shows that the formulation is already a gel *before* it is transferred into the final aerosol container package. Accordingly, the claims, as so amended, are hence novel over this embodiment of Dawson.

b) The second embodiment in the Dawson patent is disclosed at column 9, lines 3-7. This statement in Dawson is believed to be an attempt by the inventor to somehow broaden his invention, but without any clear understanding of what the statement at lines 3-7 meant, particularly as it relates to the first embodiment that is disclosed. This second embodiment

Serial No. 10/824,203

Art Unit: 4173
Examiner: Luke E. Karpinski

simply involves the components being mixed in a container which can maintain pressure, or shaking the components inside a barrier pack container to form a gel. The Examiner has stated that this second embodiment does not involve any elevated pressure as the components are added to a container which *can maintain pressure*, not one which is *under pressure*.

Thus, this so-called second embodiment (column 9, lines 3-7) somehow suggests that the complicated system involving stainless steel pipes, dynamic mixers and high pressures detailed at the bottom of column 8 and keeping the formulation under constant high pressure is the "ideal manufacturing process", while the patent then goes on to say that in fact one can just get rid of all the pipework and pressure systems and just throw all the components in a container and shake it up instead. It would thus appear that this paragraph is no more than a throwaway statement in Dawson.

Moreover, this position is supported by the scientists for the applicant. They confirm that just 'shaking' or 'simple mixing' of the components in the barrier pack type container does not actually work if there is no pressure being applied on the container. The composition formed in the container, with no pressure being applied, is not be homogeneous. It is thus not possible to form a satisfactory gel in this manner at all (let alone one which does not gel for at least 4 minutes after addition of the post-foaming agent), as the foaming agent is not sufficiently incorporated within the composition and separates out from the rest of the components, resulting in an unsatisfactory mixture containing bits of gel, bits of foam, and bits of other liquid components. Again, the Applicant is convinced that this second version is nothing more than an attempt by the inventor to somehow broaden his invention, but without any clear understanding of what the statement at lines 3-7 meant, particularly as it relates to the first embodiment that is disclosed.

In contrast, the method of the present invention does not require the application of specific high pressures. Satisfactory isopentane incorporation into the solution can be achieved by the use of high shear mixing (as opposed to 'simple mixing'). No elevated pressure conditions are hence actually applied to the container. Once mixed, the formulation is filled into the final

Serial No. 10/824,203

Art Unit: 4173
Examiner: Luke E. Karpinski

container for use and is not stored prior to addition into the final container. Accordingly, the claims, as so amended, are also hence novel over this embodiment of Dawson.

The Examiner is also rejecting the argument that there is no motivation in Dawson to solve the same problem as the invention (*i.e.* the compositions gelling prematurely and clogging up pipes during the manufacturing process), saying that all embodiments of Dawson are free of this problem anyway. Just because the problem is not addressed in Dawson does not mean that Dawson is not subject to the problem (clogging, etc.). In this regard, the Examiner cites one embodiment which says that the compositions are maintained under pressure at low viscosity, and thus are *supposedly* capable of freely moving through pipework. However, what is required in Dawson to pass through the pipework, is the elevated pressures. In other words the Dawson system would not work unless pressures of at least 80 psi are applied. The Examiner again mentions the second embodiment where the components are just added to the container before shaking, thus avoiding the problem the invention seeks to solve, but as discussed above, this embodiment does not work.

Why are the compositions kept under pressure at the embodiment at the bottom of column 8 of Dawson? It is to prevent the mixture from gelling immediately after addition of the post-foaming agent in the pipes. If the pressure was removed, the mixture would gel and clog up the pipes. Moreover, in the recent Office Action the Examiner stated that "No one of ordinary skill in the art would chose to spend additional money to maintain a delivery system under elevated pressure if said pressures were not required". Thus it is apparent to a skilled person that Dawson does suffer from the same clogging problem that the invention solves, but gets around it by using the 80-120 psi of pressure. The present invention advantageously avoids the pipe clogging issue by the delayed gelling feature of the compositions and without the need for applying such high pressures.

Further, although it is said in Dawson that the compositions can take up to 24 hours to gel, this is another throwaway statement as there is absolutely no evidence in Dawson that they do or are able to show this. In each of the examples, the formulations appear to gel immediately

Serial No. 10/824,203

Art Unit: 417
Examiner: Luke E. Karpinski

(the foaming agent is added and the gel is just said to be formed – if the gel formation was delayed by any period of time it is reasonable to presume that this would have been mentioned in Dawson). All Dawson says is that the gelling "may be immediate or take anything up to 24 hours, depending on the formulation". Dawson has provided absolutely no technical information which would allow a skilled person to prepare a particular formulation which does not gel for at least 4 minutes after addition of the post-foaming agent without the skilled person engaging in a lot of pure trial and error experimentation, which places an undue burden upon him.

Additionally, it remains that Dawson, for whatever reason, does not clearly and directly address the same pipe clogging problem as the invention. If a skilled person was looking to solve the problem addressed by the invention, he would consult another document which did directly address a solution for the pipe clogging problem. The only information the skilled person can take from Dawson on solving this problem is to apply a significant level of pressure to the system, which would lead him away from the solution provided in the present invention. The delayed gelling solution offered to this problem by the present invention is therefore neither disclosed nor suggested in Dawson, nor in any of the other references cited by the Examiner whether taken singly or in combination.

With reference to the rejections made by the Examiner, the Applicant notes that the dependent claims have also been rejected based on other prior art such as the references to Hall et al; Anderson III et al; and Sisbarro. In view of the amendments to claims 9 and 38 it is believed that these rejections of dependent claims is now moot and that all claims should now be in condition for allowance.

The main claims 9 and 38 have been amended to clarify the patentable distinction of the present invention. Regarding the recitation of the final container, this is now defined as the container from which the composition is later dispensed for direct personal use. Moreover, the final container is now defined as selected from the group comprising a bag on valve container, a bag in can container and an elasticated bladder container.

Serial No. 10/824,203

Art Unit: 4173
Examiner: Luke E. Karpinski

The Applicant has also added two dependent claims, namely claims 40 and 41. Claim 40 depends from claim 9 and claim 41 depends from claim 38. Each of these claims recite that the foregoing steps are not performed in accordance with a maintained pressure of 80-120 psi. In this regard refer to the recent Office Action on page 12 where, in connection with distinctions of pressures, the Examiner stated that "There is nothing in the claims to state that said method is not performed under a maintained pressure of 80-120psi". Such language now appears in dependent claims 40 and 41.

CONCLUSION

In view of the foregoing amendments and remarks, the Applicant respectfully submits that all of the claims pending in the above-identified application are in condition for allowance, and a notice to that effect is earnestly solicited.

If the present application is found by the Examiner not to be in condition for allowance, then the Applicant hereby requests a telephone or personal interview to facilitate the resolution of any remaining matters. Applicant's attorney may be contacted by telephone at the number indicated below to schedule such an interview.

Serial No. 10/824,203

Art Unit: 4173
Examiner: Luke E. Karpinski

The U.S. Patent and Trademark Office is authorized to charge any fees incurred as a result of the filing hereof to our Deposit Account No. 19-0120.

Respectfully submitted,
Najem YAQUB et al., Applicants

Date: 12/9/09



David M. Driscoll
Reg. No. 25,075
SALTER & MICHAELSON
321 South Main Street
Providence RI 02903
Tele: 401/421-3141
Fax : 401/861-1953
Customer No. 000987

F:\Data\WilsonGunn\Yaqub 02663\Response to 06 09 09 OA.wpd